

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MASSACHUSETTS

HUDSON SAVINGS BANK,)	
)	
Plaintiff,)	
)	
v.)	Civil No. 05-11604-GAO
)	
GEORGE C. AUSTIN, III, AS)	
EXECUTOR OF THE ESTATE OF GEORGE)	
CLIFFORD AUSTIN, JR., A/K/A)	
G. CLIFFORD AUSTIN, II, GEORGE)	
C. AUSTIN, III, AS HEIR OF)	
GEORGE CLIFFORD AUSTIN, JR.,)	
A/K/A G. CLIFFORD AUSTIN, II,)	
THE UNITED STATES OF AMERICA,)	
and MASSACHUSETTS DEPARTMENT)	
OF REVENUE,)	
)	
Defendants.)	

UNITED STATES' REQUEST FOR EXTENSION OF TIME
TO RESPOND OR OTHERWISE PLEAD WITH REGARD TO THE
COMMONWEALTH OF MASSACHUSETTS' MOTION TO DISMISS¹

NOW COMES the defendant, the United States of America, by its undersigned counsel, and, pursuant to the provisions of Rule 6(b)(1) of the Federal Rules of Civil Procedure, requests an enlargement of time in which to serve a responsive pleading to the Commonwealth's motion

¹ Pursuant to Local Rule 7.1 (which the United States has complied with in the spirit of the rule as it is not specifically applicable to requests), counsel for the United States called counsel for the plaintiff and left a message for him. That call had not been returned at the time this request was filed. Counsel for the United States spoke with assigned counsel for the Commonwealth of Massachusetts, who agreed to a limited extension of 2-3 weeks but did not have the authority to an indefinite extension.

- 2 -

to dismiss. In support of this request,² the United States, by its undersigned attorney, represents that it had originally anticipated filing a motion to stay these proceedings until a determination was reached on the same issues involving the Eleventh Amendment currently before the First Circuit Court of Appeals in GMAC v. United States, et al., Case No. 05-1859, which is on appeal from a decision of this Court entered on March 25, 2005. However, counsel for the United States, who is not involved in that appeal, discovered on August 18, 2005, that the United States has filed a motion to dismiss the appeal and remand with instructions to vacate the judgment, based on facts specific to that case (mootness with regard to the claim of the Commonwealth). The Commonwealth has until September 2, 2005, to respond to that motion.

As a result, counsel for the United States cannot in good faith presently represent that a determination in the GMAC appeal will likely fully resolve the Eleventh Amendment issues in this case, so that an opposition to the Commonwealth's motion to dismiss will probably be required unless the Court of Appeals denies the motion to dismiss.

WHEREFORE, the United States requests an enlargement of time to respond to the Commonwealth's motion to dismiss until the later of three weeks after the Court of Appeals grants the pending motion to dismiss the appeal, or, in the event the Court of Appeals denies that motion and proceeds to a merits determination of the Eleventh Amendment issues, until three

² The defendant seeks this enlargement of time pursuant to Rule 6(b)(1) of the Federal Rules of Civil Procedure "*before the expiration of the period originally prescribed.*" That Rule provides that an enlargement may be sought under such circumstances "*with or without motion,*," i.e., by a timely "request." In contrast, an enlargement sought "*after the expiration of the specified period,*" may, under Rule 6(b)(2) of the Federal Rules of Civil Procedure, be sought only "*upon motion.*"

- 3 -

weeks after a merits determination on the Eleventh Amendment issues has become final and all appeals have been exhausted.

I hereby certify that a true copy of the above document was served upon (each party appearing pro se and) the attorney of record for each other party by mail on

8/19/05 - Lydia Bottome Turanchik

Respectfully submitted,

MICHAEL J. SULLIVAN
United States Attorney

/s/ Lydia Bottome Turanchik
LYDIA BOTTOOME TURANCHIK
Trial Attorney, Tax Division
U.S. Department of Justice
Post Office Box 55
Ben Franklin Station
Washington, D.C. 20044
Telephone: (202) 307-6560
Lydia.D.Bottome@usdoj.gov

Service List

Daniel J. Burger, Esq.
Law Offices of Joseph Connolly
74 Main Street
Marlborough, MA 01745

Eileen Ryan McAuliffe, Esq.
Department of Revenue
Litigation Bureau
Post Office Box 9565
100 Cambridge Street
Boston, MA 02114-9565

George C. Austin, III
24 Bolton Street
Marlborough, MA 01752